

Application No: 10/568, 332
July 31, 2009

REMARKS

In the Office Action, Claims 13-24 were allowed, while Claims 1 and 7-12 were rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite, and additionally under 35 U.S.C. §112, first paragraph, as allegedly failing to meet the written description requirement. Claims 1-10 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,680,262 to Bochner et al. (“Bochner”). Claims 11 and 12 were objected to as depending from a rejected base claim, but the Examiner said these claims would be allowed if they were rewritten in independent form.

Applicants appreciate the Examiner’s allowance of Claims 13-24, and her indication that Claims 11 and 12 would be allowed if recast in independent form.

In response to the Examiner’s comments and actions, Claim 11 has been rewritten in independent form as amended Claim 1. The subject matter of Claim 3 has also been incorporated into Claim 1. The dependency of Claim 12 is amended to now depend from Claim 1. The dependency of Claim 4 is amended to now depend from Claim 2. Claims 3, 10, and 11 are hereby cancelled without prejudice. Accordingly, Claims 1-2, 4-9, and 12-24 are pending. No new matter is added into the case by the amendments. All objections and rejections are respectfully traversed. Reconsideration and favorable action are respectfully requested in light of the foregoing amendments and the following remarks.

Even though the present amendments are being submitted after a Final Office Action, Applicants believe they should be entered because they were suggested in the Office Action and they should put the case in condition for allowance or, at the very least, put the case in better form for appeal.

A. Claims 1 and 7-12 Meet the Requirements of §112.

The Examiner asserted that the term “agent” in Claim 1 is indefinite and causes the claim to fail to meet the written description requirement. While the metes and bounds of the term “agent” are believed to be plainly set forth in the specification and in Claim 3, in order to

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advance prosecution of this case, the subject matter of Claim 3 has been incorporated into amended Claim 1 and Claim 3 has been cancelled. Thus, the agent called for in Claim 1 is now specifically delineated in Claim 1 itself via the Markush group from Claim 3, and it is believed that all pending claims now meet all requirements of 35 U.S.C. §112.

B. Claims 1-10 are Not Anticipated by the Cited Reference.

Claims 1-10 were rejected as allegedly anticipated by Bochner. However, as presently amended, Claim 1 now includes the subject matter of former Claim 11, which was indicated in the Office Action as allowable. The claim now calls for a process for the production of recombinant interferon alpha 2. Bochner plainly does not teach, disclose, or suggest a process for the production of recombinant interferon alpha 2, therefore Bochner does not anticipate or render obvious Claim 1 or any claim dependent therefrom. Claim 10, directed to polypeptides other than interferon alpha 2, is hereby canceled by the present amendment. Accordingly, reconsideration and allowance of Claims 1-9 are hereby respectfully requested.

C. The Objection to Claims 11 and 12.

As explained above, Claim 11 has been rewritten into amended independent Claim 1. Claim 12 is amended to depend from amended Claim 1 instead of Claim 11. Accordingly, Claims 1 and 12 should now be allowed and all pending claims dependent, directly or indirectly, on Claim 1 should also be allowed. Reconsideration and allowance of all such claims are hereby respectfully requested.

CONCLUSION

Applicants respectfully submit that the application is now in condition for allowance. Action in accordance therewith is respectfully requested.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

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Respectfully submitted,
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